IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 357 OF 2005

1. Dr. Ernesto Joao
   Guilherme Rodrigues,
   Major, resident of
   House No.1258,
   Anvottem, Curtorim,
   Salcete, Goa.

2. Shri Joaquim Azavedo,
   major, resident of
   House No.1344, Corjem,
   Curtorim, Salcete,Goa.

3. Shri Armando Filomeno
   Estibeiro, major,
   resident of House No.201/B,
   Dagvalle(Maina),
   Curtorim, Salcete, Goa.

4. Shri Joaquim Santano
   Fernando Rodrigues,
   major, House No.840,
   Batora, Curtorim,
   Salcete, Goa. ... Petitioners

versus

1. State of Goa,
   through its Chief
   Secretary, Secretariat,
   Panaji, Goa,

2. The Collector of
   South Goa District,
   Margao, Salcete, Goa.

3. The Administrator of
Comunidades of South
Zone, Margao, Salcete,
Goa.

4. Escrivao/Registrar,
Comunidade of Curtorim,
Povocao, Curtorim,
Salcete, Goa.

5. Shri Eurico Rebello,
major, resident of
House No.942,
Fr. Agnelo Road,
Margao, Salcete, Goa.

6. Shri Roque D'Costa,
Major, resident of
House No.1556,
Pandicol, Curtorim,
Salcete, Goa.

7. Shri Francisco M.D'Silva,
Major, resident of
House No.513/A, Fondegalle,
Curtorim, Salcete, Goa.

8. Dr. Marlinda Rebello,
Major, resident of
House No.152, Gina(Maina),
Curtorim, Salcete, Goa.

9. Shri Olavo Paes,
Major, resident of
House No.343, Gonsoi(Maina),
Curtorim, Salcete, Goa.

10.Shri Alex Pimenta,
major, House No.1065,
Povocao, Curtorim,
Salcete, Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. M. D'Souza, Advocate for the Petitioners.

Mr. S. S. Kantak, Advocate General with Ms. L. Dharwadkar, Additional Government Advocate for the Respondent Nos.1 to 3.

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the Respondent Nos.5 to 7, 9 and 10.

CORAM : D. D. SINHA &
N. A. BRITTO, JJ.

DATE : 5TH DECEMBER, 2005.

ORAL JUDGMENT

Rule.

2. By consent of the parties heard forthwith.

3. The Writ Petition is directed against the Order dated 9-8-2005 passed by the State whereby the petitioners-Managing Committee of Comunidade of Curtorim was removed and replaced by another Managing Committee of respondent nos. 5 to 10 till the elections are held.

4. Mr. Lotlikar, the learned Senior Counsel for the petitioners contended that the appointment of the Managing Committee consisting of the petitioners under Article 41 of the Code of Comunidade was for a period of three years. It is contended that in view of the provisions of Article 69 the Members of the Board, appointed or elected, are not allowed to refuse the post, except by obtaining exemption from the Governor General etc. It is, therefore, contended that once the body is constituted and Members are appointed by the State Government, it is incumbent, mandatory for such Members to accept the appointment and since the appointment of the petitioners was made for a period of three years, the State Government could not have curtailed the period of the petitioners-Managing Committee without any justification in this regard. Mr. Lotlikar, the learned Senior Counsel alternatively contended that even if it is presumed that under the amended provisions of Article 49 the State Government is competent to appoint temporary Managing Committee in case the elections are postponed and ask such Committee to prepare fresh Voters List and conduct the elections according to law. The petitioners-Managing Committee could have been permitted to

continue till the elections are held. However, by the impugned Order, the Commitee is dissolved without giving any opportunity of hearing by the Respondent/State and, therefore, the Order is impugned in violation of the principles of natural justice and cannot be sustained in law.

5. Mr. S. S. Kantak, the learned Advocate General has submitted that as per the amended Article 49 in case of allegations or irregularities concerning the Voters List or any matter relating to elections, the Government or Collector or any Officer authorised by the Government in this behalf has power to postpone the election or appoint temporary Managing Committee which can prepare a fresh Voters List and hold the elections as per the directions issued by the State Government or any such Officer.

6. It is, therefore, contended that the Committee which the Government is entitled to appoint is always of a temporary nature and till the elections are held, according to the contingencies mentioned in Article 49.

7. The learned Advocate General further states that though the Managing Committee consisting of the petitioners was appointed by the Collector on 29-11-2004 by wrongly exercising powers under Article 41 of the Code, instead of Article 29 of the Code and, therefore, the Committee was constituted for a temporary period till the elections are held. It is further contended that powers to appoint Managing Committee vests in the State Government and the tenure being temporary, there is no vested legal right in such Committee to question the validity of the orders passed by the State Government even in case where one temporary Committee is replaced by another temporary Committee. The learned Advocate General, therefore, supported the action of the State taken by the impugned Order.

8. Mr. M. B. D'Costa, the learned Senior Counsel also supported the Order impugned and contended that the Executive Committee consisting of the petitioners was in fact appointed by the State Government while exercising powers under Article 49 and, therefore, the tenure of the Committee is temporary till the elections are held and the Order cannot be treated to be the Order issued by the State Government under Article 41.

9. We have considered the contentions canvassed by the learned Counsel for the parties and perused the Articles of the Code. In the instant case, it is not in dispute that the Collector while appointing a Managing Committee consisting of the petitioners vide Order dated 29-11-2004 in exercise of powers vested in him under Article 41 of the Act. In the instant case, it is no doubt true that the Managing Committee consisting of the petitioners was appointed vide Order dated 29-11-2004 and since then was in existence till the impugned Order was passed. In view of the rival contentions canvassed by the respective Counsel, it appears that the petitioners have challenged the impugned Order on various grounds including that the same was issued under Article 41 and, therefore, the tenure of the Committee is for three years and the Collector/State Government is not entitled to curtail the same before the expiry of three years. Similarly, the stand put forth by the State demonstrates that the Order impugned needs to be treated as the Order passed under Article 49 and, therefore, the tenure of the Committee is temporary and is till the elections are held.

10. Be that as it may, the fact remains that since the Executive Committee of the petitioners was in existence since 29-11-2004, we are of the view that before dissolving them or replacing the said Committee by

another Committee, reasonable opportunity of hearing ought to have been given to the petitioners-Managing Committee in order to comply with principles of natural justice, at the same time, we want to make it clear that we have not expressed any opinion one way or the other in respect of the scheme of provisions of Articles 41, 49, 50 etc. and we leave it to the competent authority to consider the same at the appropriate stage.

11. For the reasons stated herein above, we pass the following order:

> "The Order dated 9-8-2005 passed by the State Government is hereby quashed and set aside. The matter is remanded to the State Government for reconsideration of the issue of replacement of Managing Committee of the petitioner by another Managing Committee, by giving reasonable opportunity of hearing to the petitioners(Members of Managing Committee) as well as respondent nos.5 to 7, 9 and 10 (Members of Managing Committee). The Members of both the Managing Committees are entitled to put forth their stand before the competent authority who after hearing all the parties shall pass the final order according to law and procedure applicable in this regard as early as possible in any case not beyond the period of fifteen days from the date

of receipt of this order. The Managing Committee which is constituted by the Order dated 9-8-2005 shall continue to function till the final Order is passed by the Government in this regard".

12. Writ Petition partly allowed in above terms. No order as to costs.

D. D. SINHA, J.

N. A. BRITTO, J.

RD.